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CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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REGULAR MEETING AGENDA

TUESDAY, April 9, 2013, 5:30 P.M.

San Diego County Administration Center

1600 Pacific Highway, Room 302/303, San Diego, 92101

Pursuant to Government Code Section 54954.2 the Citizens' Law Enforcement Review Board will conduct a meeting at the above time and place for the purpose of transacting or discussing business as identified on this agenda. Complainants, subject officers, representatives or any member of the public wishing to address the Board on any of today's agenda items should submit a "Request to Speak" form to the Administrative Secretary prior to the commencement of the meeting.

DISABLED ACCESS TO MEETING

A request for a disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. Any such request must be made to Ana Becker at (619) 238-6776 at least 24 hours before the meeting.

WRITINGS DISTRIBUTED TO THE BOARD

Pursuant to Government Code 54957.5, written materials distributed to CLERB in connection with this agenda less than 72 hours before the meeting will be available to the public at the CLERB office located at 1168 Union Street, Suite 400, San Diego, CA.

1. ROLL CALL

2. MINUTES APPROVAL

- a) Minutes of the February 2013 Regular Meeting (*Attachment A*)

3. PRESENTATION / TRAINING

- a) Role of District Attorney in Officer Involved Shooting Investigations by Paul Azevedo, Chief of the Special Operations Division

4. EXECUTIVE OFFICER'S REPORT

- a) Workload Report - Open Complaints/Investigations Report (*Attachment B*)

5. NEW BUSINESS

- a) N/A

-continued on next page-

6. UNFINISHED BUSINESS

- a) Rules and Regulations Subcommittee Update

7. BOARD MEMBER COMMENTS

8. PUBLIC COMMENTS

- a) This is an opportunity for members of the public to address the Board on any subject matter that is within the Board's jurisdiction. Each speaker should complete and submit a "Request to Speak" form to the Administrative Secretary. Each speaker will be limited to three minutes.

9. CLOSED SESSION

- a) **Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).

- 12-151 / MARTINEZ

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

CASES FOR SUMMARY HEARING (9)

ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

11-059

1. Excessive Force – Deputy 2 rammed his patrol vehicle into the complainant's vehicle causing injury.

Recommended Finding: Action Justified

Rationale: Deputy 2 acknowledged that he rammed his patrol vehicle into the complainant's vehicle. The complainant had been involved in a terminated pursuit on Interstate 5, almost collided with a patrol vehicle, did collide with a passenger vehicle, and crashed head-on into the center median. After the collision, Deputy 2 positioned himself to block the lane of traffic, observed the complainant reach beneath his person, and believed the complainant may have reached for a weapon. From a distance of about 20 feet, he accelerated and collided into the driver side door of the complainant's vehicle to prevent the complainant from further reaching for a weapon. The complainant and his passenger exited the vehicle through the passenger door and fled the scene. Based on the totality of the circumstances, Deputy 2 used reasonable force in his attempt to prevent escape, overcome resistance, and affect the arrest of the complainant. Deputy 2's actions were in accordance with the Department Policy 6.48, Physical Force, and Addendum Section F, Use of Force Guidelines. The act did occur but was lawful, justified and proper.

2. Excessive Force – Deputies 2 and 4 beat the complainant on the head and face.

Recommended Finding: Action Justified

Rationale: Deputies 2 and 4 denied beating the complainant on the head and face. The complainant and his passenger exited their vehicle after a collision and attempted to flee the scene. The complainant jumped over the center median and fled southbound on Interstate 5 with Deputy 2 in foot pursuit. Deputy 2 grabbed the complainant, pushed him to the ground, placed a knee in his back to hold him, and pointed his firearm to gain compliance. Deputy 4 arrived and handcuffed the complainant. The actions of Deputies 2 and 4 were in accordance with the Department Policy 6.48, Physical Force, and Addendum Section F, Use of Force Guidelines. Photographs and medical treatment documentation did not reveal evidence of injury to the complainant's head and face other than an abrasion to his forehead. The force used take the complainant into custody was reasonable and necessary, and the actions of the deputies were lawful, justified, and proper.

3. Misconduct/Intimidation – Deputy 3 told the complainant, “If I tried to run he would finish what his partner’s had started and put a bullet in my head,” or words to that effect.

Recommended Finding: Not Sustained

Rationale: Deputy 3 denied making any threatening comment to the complainant. The complainant stated Deputy 3 made this statement while he was being treated at the hospital. There were no witnesses to this alleged encounter and there was insufficient evidence to prove or disprove the allegation.

4. False Report – Deputy 1 falsely reported the complainant’s movements and actions prior to his arrest.

Recommended Finding: Action Justified

Rationale: Deputy 1 stated that his report was truthful and accurate. He further reported that he made eye contact with the complainant and told him to pull over to the shoulder. The complainant was observed repositioning his hands on the steering wheel and leaning his body to the right. Deputy 1 believed that the complainant intended to turn into his patrol vehicle. Deputy 1 slammed on his brakes and the complainant’s vehicle swerved into his lane nearly striking the patrol vehicle. Deputy 4 confirmed the complainant and his passenger were clearly visible while the vehicles were side-by-side. The complainant believed that tinted windows prevented Deputy 1 from seeing into his vehicle. Photographic evidence showed that the tinted driver and front passenger windows did not obstruct visibility into the complainant’s vehicle. The evidence supported Deputy 1’s report and was lawful, justified and proper.

5. False Report – Deputy 5 falsely reported that he had read the complainant his “... Miranda admonishment from the Deputy’s Notebook.”

Recommended Finding: Unfounded

Rationale: Deputy 5 reported that he contacted the complainant and asked if he wanted to talk about the incident. The complainant responded by stating that he only wanted to talk with his attorney. Based on the complainant’s statement, Deputy 5 did not question him regarding the case, did not Mirandize him, and terminated the conversation. Deputy 5’s report did not state that he had read the complainant his Miranda rights. The evidence showed that the alleged act or conduct did not occur.

6. Misconduct/Procedure – Deputies 1-5 failed to read the complainant his Miranda rights.

Recommended Finding: Action Justified

Rationale: Deputies 1-4 stated they did not read the complainant his Miranda rights because they did not conduct any custodial interrogation. Deputy 5 contacted the complainant, introduced himself, and asked him if he would like to talk about the incident. The complainant responded that he only wanted to talk with his attorney. Once the complainant invoked his right to counsel Deputy 5 ceased any attempt to interrogate him. Miranda warnings are not required for every question directed by an officer to a person in custody, and an affirmative answer to Deputy 5’s question was unlikely to elicit an incriminating response from the complainant. The evidence showed the alleged acts did occur but were lawful, justified and proper.

12-021

1. Criminal Conduct – Deputy 1 lied about a 2007 probation search, while testifying in Court in 2012.

Recommended Finding: Not Sustained

Rationale: The complainant highlighted three areas of contention concerning Deputy 1's testimony: Photographs, a Discussion, and Hate Propaganda found during the search of the Hawthorne residence. During court proceedings, an attorney "flashed" pictures to Deputy 1 for reference purposes. Deputy 1 explained to CLERB that the referenced person in the photographs, was not of the complainant, but of the complainant's daughter-in-law; the plaintiff who brought forth the lawsuit. Admittedly, Deputy 1 did not immediately recognize and/or associate the complainant at Court with the woman she saw six years previously in a robe. Regarding the disputed discussion, the complainant said Deputy 1 never approached her during the 2007 search. In prior CLERB complaints, a Probation Officer and Deputy 1 both stated the P.O. was responsible for explaining the 4th waiver search. At that time, Deputy 1 was not asked directly what her interaction was with the complainant, but presently recalled that she initially addressed Donna Hawthorne. There was no other supporting evidence to corroborate either of the contradictory statements. Finally, the complainant said Deputy 1 lied and/or misled the Court regarding Nazi propaganda found at the home. The complainant's main contention was whether these materials were splayed throughout the home as testified to by Deputy 1 or enclosed within a plastic tub. Regardless, the contraband items were found within the Hawthorne home. Deputy 1 retained the materials for training purposes and submitted 47 photographs to CLERB depicting the paraphernalia. Crime scene evidence photos are disposed of in accordance with evidentiary statutes and the photographs allegedly taken at the Hawthorne home during the 2007 search are no longer available. Opposing parties' statements are contradictory, with no further evidence to support preponderance by either in order to prove or disprove this allegation.

2. Misconduct/Retaliation – Deputy 1 was vindictive because of Hawthorne's complaints.

Recommended Finding: Unfounded

Rationale: The complainant believed Deputy 1 "misled" the Court while providing testimony because the complainant filed a complaint against the Probation and Sheriff departments. Deputy 1 was under oath while testifying at the court proceedings. Deputy 1 denied contacting the Hawthorne family outside her job related duties of a 4th waiver search and a court subpoena, which were lawful, justified, and proper. Furthermore, Deputy 1 denied having bias and/or anything to gain from being untruthful regarding these events. No evidence of retaliatory acts could be found.

3. Misconduct/Retaliation – Deputy 2 drove by and/or parked near the complainant's residence after a court hearing on 2/29/12.

Recommended Finding: Not Sustained

Rationale: The complainant believed an increased law enforcement presence near her home was an act of retaliation, but offered no further identifying information for follow-up. From March 1 through April 10, 2012, there were three documented calls for law enforcement service to/around the complainant's address. Deputy 1 was questioned and denied knowledge of involvement by herself and/or others. There is insufficient evidence to either prove or disprove the allegation.

12-031

1. Misconduct/Discourtesy – Deputy 1 was rude and discourteous while serving the complainant with a legal notice.

Recommended Finding: Not Sustained

Rationale: Deputy 1 denied that he was rude and discourteous while serving a legal notice. The complainant stated that Deputy 1 called her son a liar and was rude in the manner which he delivered a Temporary Restraining Order. The involved parties offered conflicting accounts of statements made by Deputy 1 and

disagree over his conduct throughout the contact. There was insufficient evidence to provide or disprove the allegation.

2. Excessive Force – Deputy 1 pushed the complainant’s son twice.

Recommended Finding: Action Justified

Rationale: The complainant’s son retrieved a cell phone camera from inside the home and attempted to take pictures of Deputy 1’s face and identification by extending his arm toward the deputy’s face. Deputy 1 acknowledged that he made contact with the complainant’s son after he advised him to step back and remove the camera from his face. Because of the proximity of the camera to his face, Deputy 1 stated he did not push the complainant’s son, but moved his hand away from his face on two occasions. Deputy 1’s actions were reasonable and necessary, per Department Policy and Procedure, Addendum Section F, Use of Force Guidelines, to overcome the aggressive behavior of the complainant’s son. The evidence showed that the alleged conduct did occur but was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 1 told the complainant’s son that he was not allowed to take the deputy’s picture.

Recommended Finding: Not Sustained

Rationale: Deputy 1 denied making the alleged statement. The complainant’s son retrieved a cell phone camera from inside the home and attempted to take Deputy 1’s picture. As he photographed the deputy, he said he was told to, “...get your hands out of my face,” and “Don’t take my picture.” Deputy 1 said that he did not object to being filmed or photographed, rather the complainant’s son had extended the camera too close to the his face which he deemed a hazard to his safety. No audio or video evidence was available to support this allegation; as such there was insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Procedure – Deputy 1 stood in the complainant’s yard and yelled out the terms of the Temporary Restraining Order he was serving.

Recommended Finding: Action Justified

Rationale: Deputy 1 and the complainant’s son stated that the complainant interrupted the deputy’s efforts to serve a Temporary Restraining Order. After repeatedly interrupting Deputy 1, she retreated into her home, shut the door, and yelled through the door in order to avoid hearing the terms of the Order. The complainant acknowledged she retreated into the home and shut the door, but denied that she yelled to interrupt the service. Deputy 1 told the complainant that if she would not cooperate with the service and allow him to explain the terms then he would verbally deliver the Order without giving her the paperwork. By retreating into the house and closing the door the complainant attempted to avoid service of the Order so Deputy 1 read the terms of the Temporary Restraining Order in a loud voice per California State Sheriffs’ Association Civil Procedure Manual, Section VI, Serving Civil Process, and California Case Law. The evidence shows the alleged act did occur but was lawful, justified and proper.

5. Misconduct/Procedure – Deputy 1 refused to provide his identification or business card when requested.

Recommended Finding: Action Justified

Rationale: Deputy 1 was present to deliver a Temporary Restraining Order to the complainant when she demanded that he provide his name and badge number. Deputy 1 told the complainant he would provide the requested information after he served the Temporary Restraining Order terms. At the conclusion of the contact Deputy 1 provided the complainant with the information required by Department Policy and Procedure 2.20, Identification. The evidence shows the alleged act did occur but was lawful, justified and proper.

12-035

1. Excessive Force – Deputy 1 pushed the complainant’s arm behind his back until it snapped.

Recommended Finding: Action Justified

Rationale: Surveillance videotape corroborated deputies reports of the complainant disobeying staff instructions and interfering with jail operations; both violations of Inmate Rules & Regulations. Deputies used Department approved control compliance techniques to guide and subdue the complainant. Following the force, the complainant was evaluated by medical staff and cleared to return to his cell. The complainant received subsequent follow-up medical treatment that consisted of multiple x-rays; all which resulted in negative findings. However, an ensuing trip to UCSD for a MRI revealed a tendon tear. The complainant's aggressive and disruptive behavior necessitated deputy intervention, which was lawful, justified and proper.

2. Misconduct/Discourtesy – Deputy 1 said, “It’s all in a day’s work” when the complainant confronted him about his injury.

Recommended Finding: Not Sustained

Rationale: Deputy 1 refuted this allegation and stated he has never said these words after any use of force. There is no other evidence available to corroborate either of the parties opposing statements.

12-037

1. False Arrest – Deputy 1 stopped the complainant for speeding and an incomplete stop, and then subsequently arrested her for DUI.

Recommended Finding: Action Justified

Rationale: Deputy 1 observed the complainant in violation of California Vehicle Code § 22350, Basic Speed Law, and California Vehicle Code § 22450(a), Stop Requirements and conducted a traffic stop. After contacting the complainant he smelled an odor of alcoholic beverage and administered a series of Field Coordination Tests and three Preliminary Alcohol Screenings (PAS). Based on the reported objective symptoms of alcoholic beverage intoxication, the overall performance on the field coordination tests, her excessive driving speed, and positive results from the PAS, Deputy 1 determined that the complainant had been driving a motor vehicle while under the influence of an alcoholic beverage. She was arrested for violation of California Vehicle Code § 23152(a) and (b), Driving Under Influence of Alcohol or Drugs. The San Diego Sheriff's Regional Crime Laboratory later reported the complainant's Blood Alcohol Concentration (BAC) at 0.08%, exceeding the legal limit under California Vehicle Code § 23152(a) and (b). The evidence showed that the alleged act did occur but was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 handcuffed the complainant who has a defective back.

Recommended Finding: Action Justified

Rationale: Deputy 1 placed the complainant under arrest and handcuffed her for transportation to the Substation and then to a detention facility. The complainant did not believe handcuffs were necessary because she told the deputy that she had a bad back, and that she had cooperated with the deputy throughout the stop. Deputy 1 advised the complainant that handcuffing was a standard procedure and he could not remove the cuffs. Based on the complainant's statement of about her back, Deputy 1 used two sets of handcuffs instead of one to ease any stress to her shoulders and back. The evidence showed that the alleged act did occur but was lawful, justified and proper.

3. Misconduct/Discourtesy – Deputy 1 was “out of line, arrogant, rude and belligerent” to the complainant.

Recommended Finding: Not Sustained

Rationale: The complainant and witness accounts differed from Deputy 1's statement and that of a witness deputy. Without further exculpatory evidence, there was insufficient evidence to either prove or disprove this allegation, which is subjective and was not recorded in any way.

4. False Reporting – Deputy 1 incorrectly recorded the complainant's social security number on an unknown form.

Recommended Finding: Action Justified

Rationale: Deputy 1 acknowledged that complainant's social security number was incorrectly recorded on a document. The Booking Intake/Personal Property Inventory Form, signed by both the complainant and the deputy, was annotated immediately when the error was noted. Additional booking documentation properly recorded the complainant's social security number in the Sheriff's Jail Information System. Deputy 1's Booking Intake/Personal Property Inventory Form admittedly contained an error, which was corrected. The evidence shows the alleged act occurred but was lawful, justified and proper.

5. Discrimination/National Origin – Deputy 1 mistreated and/or treated the complainant differently because of her race.

Recommended Finding: Unfounded

Rationale: Deputy 1 denied mistreating the complainant differently because of her race. Sheriff's Policy and Procedure 2.48, Treatment of Persons in Custody, states that employees shall not mistreat, nor abuse physically or verbally, persons who are in their custody, Policy and Procedure 2.53, Discrimination, states that employees shall not express any prejudice or harassment concerning race, religious creed, color, or nationality. Policy and Procedure 2.55, Non-biased Based Policing, requires that all investigative detentions, traffic stops, arrests, searches, and seizures of property will be based on a standard of reasonable suspicion or probable cause as required by the Fourth Amendment of the U.S. Constitution and relevant statutory authority. The complainant was observed speeding, rolled through a stop sign, and was subsequently arrested for driving under the influence. The evidence showed that Deputy 1 had probable cause to conduct the traffic stop, administer the field coordination tests, and effect arrest. The actions were justified and the alleged discrimination cannot be attributed to Deputy 1.

12-056

1. Misconduct/Procedure – Deputy 1 ignored and/or refused to provide a dinner meal to the complainant.

Recommended Finding: Action Justified

Rationale: The complainant and other inmates were late returnees from court, returning to jail after their dinner meal had been served. The complainant requested his meal and Deputy 1 reported that he informed the complainant that he would receive a sack lunch for dinner, pursuant to San Diego Central Jail's Green Sheet Policy K15.C.1, Meal Schedules, prior to returning to his housing floor. This process was interrupted and delayed due to the complainant's disruptive behavior coming off of the bus and while being escorted back to his housing floor. Deputy 1 reported that the complainant became argumentative and aggressive, and since he was alone during the escort of several inmates, he decided to secure the complainant in handcuffs and a holding cell before attending to the other inmates. The alleged act or conduct did occur, but was lawful, justified and proper.

2. Misconduct/Retaliation – Deputy 1 handcuffed the complainant because he continued to ask for dinner.

Recommended Finding: Not Sustained

Rationale: Deputy 1 denied that he handcuffed the complainant for this alleged reason, stating instead that he handcuffed the complainant because he was disruptive during his escort and continued to disobey his order to stop talking. Deputy 1 was alone while escorting several inmates from the holding area to their housing floors. The complainant became boisterous and aggressive during this process, so for safety purposes, Deputy 1 handcuffed the complainant and secured him in a holding cell before attending to the other unsecured inmates. There was insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Procedure – Deputy 1 stated, "You might as well get comfortable because I'm here until 1:00 AM," or used words to that effect, and placed the complainant in a holding cell.

Recommended Finding: Not Sustained

Rationale: Deputy 1 denied making this alleged statement or that he used words to that effect. He further denied that he, in any way, expressed or implied to the complainant that he would be locked handcuffed in the holding

cell for several hours. There were no witnesses to this alleged statement and absent any audio recording of this incident, there was insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Discourtesy – Deputy 1 stated about the complainant, “I can handle this little mother fucker myself,” or used words to that effect.

Recommended Finding: Not Sustained

Rationale: Deputy 1 denied making this alleged statement or that he used words to that effect. He reported that deputies came out of the intake area when they heard the complainant yelling profanities, but he told them that he was okay. Deputies assigned to the Holding Cell and Intake Areas where this incident was alleged to have taken place, denied hearing Deputy 1 make this statement. There were no audio recordings of this incident and therefore insufficient evidence to either prove or disprove the allegation.

5. Excessive Force – Deputy 1 grabbed the complainant by the neck.

Recommended Finding: Not Sustained

Rationale: Deputy 1 had returned to the complainant’s holding cell to escort him back to his housing floor, and was surprised to discover that the complainant had moved his handcuffs from behind his back to the front of his body. Per Deputy 1, the complainant immediately brought his hands up toward him, so he placed his left hand on the complainant’s chest and pushed him into the cell. Deputy 1 denied that he grabbed the complainant by the neck, reporting instead that he used his left hand and pushed on the upper part of the middle of the complainant’s chest. None of the deputies assigned to the Holding Cell area witnessed this incident, nor was there any video recording of this event. As such, there was insufficient evidence to either prove or disprove the allegation.

6. Excessive Force – Deputy 1 struck the complainant in the mouth and on the right side of his face.

Recommended Finding: Action Justified

Rationale: Upon entering the complainant’s Holding Cell, Deputy 1 discovered that the complainant had moved his handcuffs from behind his back to the front of his body. Deputy 1 pushed the complainant further into the cell, but the complainant immediately thrust his arms upwards, knocking Deputy 1’s arm off of his chest and striking the bottom of his chin. Not knowing the extent to which the complainant’s hands were free, Deputy 1 struck the complainant in the face area in an effort to control him and quell his assault. Pursuant to Policy I.89, Use of Force, Detention Facility personnel may use any physical force which is necessary and objectively reasonable in the defense of self or others, to enforce a lawful order, to prevent or stop an escape or to overcome resistance. Deputy 1 used department approved techniques and tactics in controlling the inmate and situation, and his actions were lawful, justified and proper.

7. Excessive Force – Deputy 1 placed his knee in the complainant’s back and twice struck him in the back of the head.

Recommended Finding: Not Sustained

Rationale: Deputy 1 reported that he placed his knee in a handcuffing position on the complainant’s back in an effort to control the complainant while waiting for more deputies to arrive. Deputy 1 denied that he struck the complainant in the back of the head at any time. None of the deputies assigned to the Holding Cell area witnessed this incident, nor was there any video recording available. As such, there was insufficient evidence to either prove or disprove the allegation.

8. Misconduct/Procedure – Deputy 2 removed the complainant from medical, before he received treatment.

Recommended Finding: Action Justified

Rationale: Following a Use of Force incident involving Deputy 1, the complainant was chained and escorted to medical to be examined by the facility medical staff for any injuries. Deputy 2 asked the complainant three separate times if he wanted a nurse to treat him. Each time the complainant responded, “I am not refusing medical treatment,” but when approached by the nurse, he would stare straight ahead and refused to open his

mouth so that his injury could be seen. There were approximately 10 other inmates in the medical area awaiting treatment for various medical issues, so after approximately 5 minutes of the complainant refusing the offered medical treatment, Deputy 2 ordered that the complainant be removed from the medical area and escorted back to his assigned cell. The requisite Medical Refusal Form was signed by Deputy 2 and placed in the complainant's file. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

9. Misconduct/Procedure – Deputy 2 placed the complainant in Administrative Segregation.

Recommended Finding: Action Justified

Rationale: The complainant was a Level 5 (High Level) inmate at the time of this incident and in custody for kidnapping, assault with a deadly weapon, robbery and delaying an officer. The complainant manipulated his handcuffs and assaulted a deputy. Pursuant to Detentions Policy R.1, Inmate Classification, Deputy 2 approved the placement of the complainant in Administrative Segregation, where he was also to be dressed in Day-Glo Green clothing to alert staff to the complainant's assault risk. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

12-057

1. Misconduct/Procedure – Deputy 1 failed to properly Mirandize the complainant.

Recommended Finding: Sustained

Rationale: Constitutional law requires that Miranda warnings are given prior to any custodial interrogations. This constitutional provision is in place to protect an arrestee's Fifth Amendment privilege against self-incrimination. By his own admission, Deputy 1 did not advise the complainant of his Miranda rights prior to interrogating him while in custody, and acknowledged that this was a "procedural mistake" on his part. The evidence supports the allegation and the act or conduct was not justified.

12-060

1. Illegal Search or Seizure/Home – Deputy 2 entered and searched the complainant's home without consent or a search warrant.

Recommended Finding: Action Justified

Rationale: Deputy 2 was dispatched to the complainant's residence to assist the Fire Department with gaining entry into the complainant's home. The complainant had contacted 911 and reported that she was violently ill and in need of emergency medical services. Fire Department personnel transported the complainant to the hospital prior to Deputy 2's arrival on scene and unbeknownst to the complainant's husband. Deputy 2 reported that he contacted the complainant's husband and offered to assist in locating his wife; the husband accepted his offer and granted him permission to enter their home to search the premises. The complainant's husband denied giving Deputy 2 consent to enter his home, but admitted that he was drowsy and confused during his contact with Deputy 2, having taken a sleep aid and other medication hours earlier. Also, his accounts of that night's events were admittedly vague due to the passage of time. Pursuant to case law on the search and seizure of premises, particularly as they relate to consent searches, it is permissible for law enforcement authorities to enter a residence where consent to enter is given by a person who has authority to do so and who is present at the residence. The actions of Deputy 2 were lawful, justified and proper.

2. Misconduct/Procedure – Deputy 2 told the complainant that he needed to be informed if they possessed a gun or purchased a gun in the future.

Recommended Finding: Not Sustained

Rationale: Deputy 2 denied making this statement to the complainant and Deputy 1, who was present during this contact, denied hearing Deputy 2 make this statement. When the complainants informed Deputy 2 that they were contemplating purchasing a firearm, he reported that he told them that it was their legal right to own a

firearm. In the absence of videotape or an audio recording of this contact, there was insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Procedure – Deputy 2 informed the complainant that, “I decide if you are fit to own a gun” or used words to that effect.

Recommended Finding: Not Sustained

Rationale: Deputy 2 denied stating to the complainant, “I decide if you are fit to own a gun” or that he used words to that effect. Deputy 1, who was present during this contact, denied hearing Deputy 2 make this statement. Deputy 2 reported that at no time during his contact with the complainants did he tell them that he had a role in determining whether they could or could not purchase or own a firearm. In the absence of videotape or an audio recording of this contact, there was insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Discourtesy – Deputy 2 stated to the complainant, “I would like to see you guys on the other side of my bracelets,” or used words to that effect.

Recommended Finding: Unfounded

Rationale: Deputy 2 denied stating, “I would like to see you guys on the other side of my bracelets,” or that he used words to that effect. In context, Deputy 2 reported saying, “I would hate for you guys to end up in bracelets” as a caution to any unsafe discharges of a weapon. The investigation revealed that the complainant and her husband offered differing statements which supported Deputy 2’s account, with the complainant providing contradictory statements to CLERB and the Sheriff’s Internal Affairs Unit. Deputy 1 was present during this contact and denied hearing Deputy 2 make any discourteous or inappropriate statements. The evidence showed that the alleged conduct did not occur.

12-089

1. Excessive Force – Deputies “assaulted” a mentally ill inmate, causing a badly bruised and swollen face, as well as other unknown injuries.

Recommended Finding: Action Justified

Rationale: The complainant was not a witness to the incident and only observed the injuries to her son after the event. Surveillance videotape provided irrefutable evidence of the 250 lb. inmate ambushing, kicking and repeatedly striking Deputy 2 in an attempt to flee. Currier’s actions injured two deputies and resulted in the documented cuts and bruises to his face. Deputies used Department approved control compliance techniques, body weight and fist strikes to subdue the inmate. There was no tazer or pepper-spray used during this incident. Following the use of force, Currier was evaluated and treated by medical personnel; however CLERB did not have a signed medical release and were unable to access Currier’s medical records from the Sheriff’s Department or UCSD for further details. The inmate’s attempt to flee and his aggressive behavior necessitated numerous deputies’ involvement to overcome resistance, and their actions were lawful, justified and proper.

End of Report